No. 24-13

IN THE
Supreme Court of the United States

STATE OF OHIO, *et al.*,
Petitioners,
v.
U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF *AMICI CURIAE* OF THE STATES OF IOWA, IDAHO, NEW HAMPSHIRE, NORTH DAKOTA, SOUTH DAKOTA, TENNESSEE, VIRGINIA, AND WYOMING SUPPORT OF PETITIONERS

BRENNA BIRD
Attorney General
ERIC WESSAN*
Solicitor General
PATRICK C. VALENCIA
Deputy Solicitor General
IOWA DEPT. OF JUSTICE
Hoover Office Building
Des Moines, Iowa 50309
(515) 823-9117
eric.wessan@ag.iowa.gov

Counsel for Amici Curiae

**Counsel of Record*
(additional counsel listed at end)

QUESTION PRESENTED

May Congress pass a law under the Commerce Clause that empowers one State to exercise sovereign power that the law denies to all other States?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

INTEREST OF AMICUS CURIAE

Amici curiae States of Iowa, Idaho, New Hampshire, North Dakota, South Dakota, Tennessee, Virginia, and Wyoming ("amici States") submit this brief in support of Petitioners, State of Ohio *et al.*, urging this Court to reverse the District of Columbia Circuit's decision. That decision denied State Petitioners' equal sovereignty claim under the United States Constitution.

Amici States have a strong interest in this case's outcome. First, the Environmental Protection Agency's decision to waive federal preemption of California Regulations inflicts an unconstitutional wound to the States' equal sovereignty. Only California can seek waivers while other States must either adopt the EPA's or California's regulations. So California may pursue regulatory innovation but other States may not.

Second, California's stringent regulatory requirements burden Petitioner States with their financial repercussions. California mandates that a specific percentage of an automaker's fleet must consist of electric vehicles. That mandate surpasses the current market demand for such vehicles, compelling manufacturers to invest far more resources than they would absent the regulations. Those added expenses are inevitably passed down to consumers, including Petitioner States, who are large-scale vehicle purchasers. In essence, Petitioner States are forced to subsidize California's stringent regulatory framework while also being barred from adopting

their own. Thus, California's regulations creates an unconstitutional double indignity for other States. Those States must bear the economic strain of subsidizing California's regulations without equal sovereignty to express their own policy preferences.

SUMMARY OF ARGUMENT

Waivers under Section 209 of the Clean Air Act are unconstitutional because of the Constitution's fundamental principle of equal sovereignty. 42 U.S.C. § 7543. Therefore, the waiver issued under its authority is "not in accordance with law" and "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. §§ 706 (2)(A)–(B).

In ruling for the EPA, the D.C. Circuit "overlook[ed] the truism that the Union under the Constitution is essentially one of States equal in local government power." *Virginia v. W. Va.*, 246 U.S. 565, 593 (1918). "[T]he whole Federal system is based upon the fundamental principle of the equality of the States under the Constitution." *Bolln v. Neb.*, 176 U.S. 83, 89 (1900). But the court below held that this fundamental principle did not apply when Congress exercises its commerce power. This is wrong. States enjoyed equal sovereignty before they joined the union, and they did not surrender it when they adopted the Constitution.

By adopting the Reconstruction Amendments, States surrendered some of their equal sovereignty. But *Shelby County* explained that the principle remains. *Shelby Cnty. v. Holder*, 570 U.S. 529, 544 (2013). In evaluating whether legislation to enforce the Amendments is "appropriate," the courts must

consider the degree to which it infringes on equal sovereignty. *Id.* at 537. Because equal sovereignty remains part of America's legal background even where evaluating actions taken pursuant to the Reconstruction Amendments, the principle must be considered in cases relating to the Commerce power. In holding otherwise, the D.C. Circuit failed to disaggregate Congress' power related to State sovereignty under the Reconstruction Amendments from *Shelby County*.

Because the Reconstruction Amendments did not impede equal sovereignty under the Constitution's commerce powers, Ohio's challenge should proceed. Evaluating the Clean Air Act's waiver provisions under the *Shelby County* framework, the waiver provisions fail to show that they are an appropriate means of remedying a "local evil." *South Carolina v. Katzenbach*, 383 U.S. 301, 329 (1966). Air pollution, particularly the greenhouse gas emissions that California seeks to stringently regulate, is a global problem, not a local one.

This Court should build out the principles underlying equal sovereignty. Here, the Court can make good on the guarantee of equal sovereignty without jeopardizing enforceability of other federal laws. The waiver provisions are part of a small and discrete class of laws that allow one State to regulate in areas that others cannot. Equal sovereignty does not require equal treatment, but it does require equality in the sovereign "power, dignity, and authority" *Coyle v. Smith*, 221 U.S. 559, 567 (1911).

ARGUMENT

I. EQUAL SOVEREIGNTY MUST BE CONSIDERED IN REGULATIONS UNDER THE COMMERCE POWER

Equal Sovereignty is a fundamental principle of the Constitution, "implicit in its structure and supported by historical practice." *Franchise Tax Bd. v. Hyatt,* 587 U.S. 230, 247 (2019). It traces its genesis to the States as sovereigns before the Union. And from there, it was never lost. States did not give up equal sovereignty when they adopted the Constitution. Rather, they divided sovereignty between the States and the Federal government. In so doing, they retained their sovereignty. While States compromised their equal sovereignty in adopting the Reconstruction Amendments, even there, the principle remains important in evaluating legislation. And because States did not give up equal sovereignty with respect to Article I, it must also be considered in regulation of commerce.

1. *States did not give up their right to equal sovereignty when they adopted The Constitution.*

Equal sovereignty starts at the Founding. When the States declared their independence, each "claimed the powers inherent in sovereignty—in the words of the Declaration of Independence, the authority 'to do all . . . Acts and Things which Independent States may of right do.'" *Murphy v. NCAA*, 138 S. Ct. 1461, 1475 (2018) (quoting Declaration of Independence ¶ 32). Here, equal

sovereignty derives from that earlier total sovereignty.

The Constitution's ratification did not disrupt that equal sovereignty—the Constitution regulated people, not States. Whether Congress would legislate directly on individuals or States, as it had under the Articles of Confederation, was "a topic of lively debate among the Framers." *New York v. U.S.*, 505 U.S. 141, 163 (1992). The Framers ultimately adopted a structure, encapsulated in the Supremacy Clause, under which "Congress would exercise its legislative authority directly over individuals rather than over States." *Id.* at 165. Oliver Ellsworth articulated that principle at the Connecticut Convention: "This Constitution does not attempt to coerce sovereign bodies, states, in their political capacity." *Id.* (quoting 2 Jonathan Elliot, Debates on the Federal Constitution 197 (2d ed. 1863)). Similarly, Charles Pinckney explained at the South Carolina Convention that, under the Constitution, the government would "operate upon the people, and not upon the states." *Id.* (citing 4 Elliot, *supra*, at 256).

The Federalist Papers also illuminate the equal sovereignty doctrine's underlying logic. James Madison explained that "a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity." *Id.* at 180 (quoting The Federalist No. 20 (James Madison & Alexander Hamilton) (Clinton Rossiter ed., 1961)). That historical context

underscores that Congress, under the Supremacy Clause, was not intended to exercise "a sovereignty over sovereigns," or to be "a government over governments," regardless of whether it acts through prohibition or affirmative command. *Id*.

In other words, sovereignty precludes hierarchy through granting unique privileges to one State but not others. Heeding Madison's warning, the Constitution instead "split the atom of sovereignty." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). In so doing, it creates "two orders of government, each with its own direct relation, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *Id*. And within that structure, the Constitution enshrines the "idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." *Id*. The equal sovereignty doctrine avoids that type of unconstitutional incursion.

2. *Since equal sovereignty applies to the Reconstruction Amendments, it must also apply to exercises of commerce power.*

Equal sovereignty is at its nadir under the Reconstruction Amendments—but even there, the important principle remains. In adopting the Reconstruction "Amendments, the States . . . expressly compromised their right to equal sovereignty." Bellia & Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835, 938 (2020).Under the Reconstruction Amendments, Congress may

enforce their guarantees through "appropriate legislation," which can include limiting the sovereignty of a single State. *See* U.S. Const., amend. 13, § 2; amend. 14, § 5; amend. 15, § 2. Even where Congress may act, equal sovereignty retains a powerful force in defining what legislation is appropriate. *Shelby Cnty.*, 570 U.S. at 544–45.

This partial abrogation of equal sovereignty in the context of the Reconstruction Amendments is what allows Congress to place disparate burdens on State sovereignty to enforce those provisions of the Constitution. Before adopting the Reconstruction Amendments, this Court declined to allow Congress to coerce a single State into protecting religious freedom because there "must be, from a constitutional necessity, a perfect and unchangeable equality among the states, not indeed in reference to the powers which they may separately exercise, (for that depends upon their own municipal constitutions,) but in reference to those which they separately retain." *Permoli v. Mun. No. 1 of New Orleans*, 44 U.S. (3 How.) 589, 606 (1845).

But the Reconstruction Amendment permit, and perhaps even encourage, regulations that target individual States to remedy local evils. *See, e.g.*, *City of Boerne v. Flores*, 521 U.S. 507, 532 (1997) ("The [nationwide] reach and scope of RFRA distinguish it from other measures passed under Congress' enforcement power, even in the area of voting rights."). In sum, the Reconstruction Amendments alter the calculus surrounding equal sovereignty when it comes to laws passed pursuant to those Amendments.

But even in the context of the Reconstruction Amendments, "the fundamental principle of equal sovereignty remains highly pertinent" in evaluating legislation for appropriateness. *Id.* at 544. To pass equal sovereignty muster, Congress "must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions." *Shelby Cnty.*, 570 U.S. at 553." Those conditions must take the form of "local evils" present in the jurisdictions that bear the burden of discriminatory regulation. *Nw. Austin Mun. Utility Dist. No. One. v. Holder*, 557 U.S. 193, 203 (2009) (quoting *Katzenbach*, 383 U.S. at 328–29). Where such an evil is present, "any departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem it targets." *Id.*

That approach shows the equal sovereignty doctrine's importance in our Constitutional system. The Reconstruction Amendments were "specifically designed to alter the federal-state balance" and allow the Federal Government to exert power over the States. *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999). But even under those amendments the States retain their equal sovereignty. This resilience, even in an area where equal sovereignty is partially abrogated, necessarily implies even greater strength where equal sovereignty remains unrestricted, the Commerce Power.

Because equal sovereignty retains its force even when expressly compromised, it is not "so ephemeral as to dissipate" when Congress acts under its Article I

power. *Seminole Tribe v. Fla.*, 517 U.S. 44, 65–66 (1996). The Reconstruction Amendments "alter the federal state balance," in which the Commerce Clause is the status quo. *Coll. Sav. Bank,* 527 U.S. at 670. Therefore, the equal sovereignty doctrine *must* apply with at least equal force in evaluating legislation under the commerce power. In adopting the Constitution, including Article I, States did not forfeit their equal sovereignty.

II. THE COURT SHOULD AFFIRM EQUAL SOVEREIGNTY AS A LIMIT ON THE COMMERCE POWER.

The D.C. Circuit got it backward. Congress has more latitude to encroach on equal sovereignty within the context of the Reconstruction Amendments, not less. State sovereignty, including equal sovereignty, traces a direct line to the Founding. States did not abandon that sovereignty when they joined the union. They did not lose that sovereignty when they ratified the Constitution. And they did not forfeit the protections of that sovereignty elsewhere when enacting the Reconstruction Amendments. Even if Congress can abrogate equal sovereignty identically under the commerce power as it can under the Reconstruction Amendments, the Clean Air Act's waiver provisions fail to satisfy *Shelby County*'s framework for appropriateness.

1. *Even under* Shelby County*'s framework, the waiver provisions cannot stand.*

Even under *Shelby County* Section 209's waivers fail. The waiver allows States to regulate

greenhouse gases to alleviate climate change. Pet. App. 211a. But climate change is a global problem. So the waiver's "disparate geographic coverage is [not] sufficiently related to the problem it targets." *Nw. Austin,* 557 U.S. at 203.

States other than California bear the brunt of climate change, undermining the appropriateness of allowing only California, out of all States, to set its own independent policies. The EPA's own projections contend that temperature changes are projected to be greater in the Northeast. *See Climate Change and Social Vulnerability in the United States* 12, EPA (Sept. 2021), https://perma.cc/5VAE-9VLG. The EPA has also explained that sea-level rise is projected to affect New York, Houston, and Philadelphia more than coastal California cities. *Id*. at 14.

But even though New York is projected to suffer more harm than California, New York cannot also adopt regulations like California. *See American Automobile Mfrs. Assn. v. Cahill*, 152 F.3d 196, 200 (2d Cir. 1998) (preempting regulations concerning the sale of Zero Emission Vehicles); s*ee also Am. Petroleum Inst. v. Jorling*, 710 F. Supp. 421, 431 (N.D.N.Y. 1989) (finding New York's fuel regulations must yield to the EPA's regulations).

Even if California were uniquely affected, granting only California a unique authority to waive federal environmental regulations will not solve the global climate crisis. The causes of any relevantly alleged climate change are "global," not local. *City of New York v. Chevron Corp.*, 993 F.3d 81, (2d Cir.

2021). Greenhouse gases "remain in the atmosphere long enough to become well mixed, meaning that the amount that is measured in the atmosphere is roughly the same all over the world, regardless of the source of the emissions." *Overview of Greenhouse Gases*, U.S. Environmental Protection Agency, https://perma.cc/5777-TJRN. It is hard to see how a uniform global distribution of Carbon Dioxide could be called a "local evil." *Katzenbach*, 383 U.S. at 329.

Beyond failing to identify a local evil to be addressed by the waiver provisions, it is far from clear that the provisions effectively address any evil at all. The EPA has never disturbed its finding that California's standards "will not meaningfully address global air pollution problems of the sort associated with [greenhouse-gas] emissions." 84 Fed. Reg. at 51,349. In review, "appropriate legislation" must address a local evil. Climate change is a global evil. And according to both caselaw and the EPA, the waiver provisions address neither.

The historical justification for the regulations also fails to render them appropriate as they do not reflect "current conditions," and the present waiver does not relate to them. *Shelby County*, 570 U.S. at 553. What's more, it is not clear that there ever was sufficient support for a California-specific waiver provision. The Clean Air Act's legislative history suggests that many Representatives had concerns about the specific effects of climate on their State, but only California got authority under the waiver provision. *See* 95 Cong. Rec. 123, 16676 (remarks of Rep. Maguire) ("My State [New Jersey] wants to be

able to do what California is doing, and as I understand it some other States might also wish to do so. Why should we not be permitted to do that?"); *Id.* at 16677 (remarks of Rep. Carter) ("[W]e have one State right now, [Colorado], which has specific problems today over in the city of Denver. Are we going to tell them they cannot solve their pollution problems, just as California is solving theirs?")

Outdated climate science explained that California's "geography and prevailing wind patterns," coupled with its unusually large number of vehicles, made smog a more significant problem there than in other States. 49 Fed. Reg. 18,887, 18890 (May 3, 1984) (citing 113 Cong. Rec. 30,948 (Nov. 2, 1967)). But the waiver now is not being used to target local smog. Rather, the waivers are requested to combat the global ill of an allegedly changing climate. That changing climate is alleged to be related to carbon dioxide—notably not a local California issue. According to the EPA, smog and greenhouse gas emissions are different. *See* Greenhouse Gas Versus Smog Forming Emissions, EPA, https://perma.cc/8MYX-UV5A. Smog is caused by local pollutants like nitrogen oxides and volatile organic compounds, while greenhouse gasses including carbon dioxide are alleged to contribute to global climate change. *Id.* Waivers issued to reduce greenhouse gas emissions are unrelated to any California-specific environmental woes and are therefore not "appropriate legislation."

The "task of dealing with" a changing climate is inappropriate to delegate to one State's idiosyncratic

preferences. *Ctr. for Biological Diversity v. EPA*, 722 F.3d 401, 415 (D.C. Cir. 2013) (Kavanaugh, J., concurring). Allowing one State, not uniquely affected by greenhouse gas emissions, to intrude on other States' sovereign regulatory powers while all others are denied the ability to do so is a quintessential violation of the equal sovereignty principle.

2. *Affirming equal sovereignty will not open Pandora's Box.*

Concerns about proper respect for the equal sovereignty doctrine and its effect on jurisprudence are misplaced. Some radical commentators that object to *Shelby County* believe that duly applying that precedent would have bad policy effects. *See* Leah Littman, *Inventing Equal Sovereignty,* 114 Mich. L. Rev. 1207, 1239-45 (2016) (listing statutes author alleges as violating equal sovereignty); *see also Shelby Cnty.*, 570 U.S. at 588 (Ginsburg, J., dissenting) ("[E]xtension of the equal sovereignty principle outside of . . . the admission of new states is capable of much mischief."). Those concerns boil down to the claim that robust protection of equal sovereignty will lead to the invalidation of many laws.

Respect for the sovereignty of States and the effects of that respect should not dissuade the court from affirming *Shelby County* and equal sovereignty for two reasons.

First, most of the laws cited as endangered by equal sovereignty are safe. Equal sovereignty only requires uniform distribution of "political rights and obligations," not burdens and benefits that stem from

federal legislation. *Stearns v. Minn.*, 179 U.S. 223, 245 (1900). Most federal enactments do not give special advantages to one State that deny it to another. Even rarer is a statute like Section 209 that explicitly gives only one State authority to regulate contrary to federal law but denies that right to other States.

Second, "the magnitude of a legal wrong is no reason to perpetuate it." *McGirt v. Okla.*, 140 S. Ct. 2452, 2480 (2020).

Many laws that critics refer to as violating equal sovereignty principles do not actually do so. A law can have a differential impact between States—giving one State more resources, for example—without affecting political sovereignty. In dissent, Justice Ginsburg warned of hypothetical consequences of affirming the equal sovereignty principle—none of which have come to pass. *See Shelby Cnty.*, 570 U.S. at 588 (Ginsburg, J., dissenting). According to that dissent, considering equal sovereignty in a context outside a State's admission to the union would invalidate many longstanding laws related to how the government allocated funding. *See id.* (citing 26 U.S.C. § 142 (where the EPA could locate green building projects); 42 U.S.C. § 3796bb (allocating rural drug enforcement assistance funding); 42 U.S.C. § 10136 (restricting funding to nuclear waste sites)). But federal spending and distribution of resources are not restrictions on sovereignty.

Indeed, equal sovereignty plays no role in the normal and uneven distribution of resources and

funding. "The true constitutional equality between the states only extends to the right of each, under the Constitution, to have and enjoy the same measure of local or self-government, and to be admitted to an equal participation in the maintenance, administration, and conduct of the common or national government." *Case v. Toftus*, 39 F. 730, 732 (C.C.D. Or. 1889). The Constitutional "guarantee [is] of equal sovereignty, not of equal treatment in all respects" and simple expenditures clearly fall on unprotected treatment side of the dichotomy. Thomas Colby, *In Defense of the Equal Sovereignty Principle*, 65 Duke L. J. 1087, 1149 (2016) (emphasis omitted).

Another concern with the equal sovereignty doctrine are laws that allow longstanding State regulations to continue unchanged but disallow States from prospectively enacting similar statutes. *See, e.g.*, 42 U.S.C. § 6297 (excluding "regulation concerning the water use of lavatory or kitchen faucets adopted by the State of Rhode Island prior to October 24, 1992" from preemption). But it is not clear that those laws violate equal sovereignty, either. All states are equally frozen in their ability to regulate prospectively. And all States are allowed to continue with their existing regulations unchanged. There is no inequality between the States there.

Enforcing the equal sovereignty principle will not lead to mass invalidation. It is true that a few "federal laws impose limits on states' lawmaking power while exempting particular states . . . from federal regulation." Littman, *supra*, at 1239–45 (collecting statutes). But even here, it is far from

certain that those laws are invalid under equal sovereignty, which, though "highly pertinent in assessing subsequent disparate treatment of states," is not a categorical "bar on differential treatment"—at least in the limited sphere of evaluating laws enacted under the Reconstruction Amendments. *Shelby Cnty.*, 570 U.S. at 544 (citing *Katzenbach*, 383 U.S. at 338–339).

In any case, potential equal sovereignty violations are not prolific. And if laws violating the equal sovereignty principle outside the Clean Air Act exist, they may very well be "like dandelions on an unmowed lawn—present more by inattention than by design" and thus not deeply indispensable to Congress' ability to legislate. *In re Dry Max Pampers Litig.*, 724 F.3d 714, 722 (6th Cir. 2013). Whatever the frequency of laws raising issues of equal sovereignty, it's time for this court to do some weed-whacking. See *Disc. Inn, Inc. v. City of Chicago*, 803 F.3d 317, 325 (7th Cir. 2015) ("dandelions . . . are weeds").

III. THIS IS THE CASE TO AFFIRM EQUAL SOVEREIGNTY.

The Clean Air Act's unconstitutional California favoritism presents the perfect opportunity for this Court to reaffirm the equal sovereignty doctrine. This record represents a clear-cut example of an equal sovereignty violation without a need to extend its reach. *Shelby County*, if it is to have any meaning at all outside the reconstruction amendments, means that this California-specific waiver fails to present an appropriate occasion to abrogate equal sovereignty.

Further percolation on this issue is unlikely as equal sovereignty is such a foundational principle under our Constitution that violations are rare. And because the D.C. Circuit has exclusive jurisdiction in many Clean Air Act cases, there cannot be a circuit split on this issue. The time is right to affirm equal sovereignty.

1. *Opportunities to affirm equal sovereignty are rare.*

It is not clear when another equal sovereignty issue will present itself. In ruling for the respondents, the D.C. Circuit claimed to be "join[ing] two other circuits to have considered the issue in rejecting State Petitioners' request to extend the equal sovereignty principle in this fashion." *Ohio v. Env't Prot. Agency*, 98 F.4th 288, 307 (D.C. Cir. 2024) (citing *NCAA v. Governor of N.J.*, 730 F.3d 208, 239 (3d Cir. 2013), *abrogated on other grounds by Murphy v. NCAA*, 584 U.S. 453 (2018) and *Mayhew v. Burwell*, 772 F.3d 80, 95 (1st Cir. 2014)). But neither case clarifies equal sovereignty.

Murphy set aside as unconstitutional the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. § 3701 *et seq*. *See Murphy*, 584 U.S. 453. Just as the Clean Air Act restricts all States but California in environmental regulation, PAPSA prevented States other than Nevada from regulating gambling. PAPSA likely violated equal sovereignty—but neither the Third Circuit nor this Court reached that issue in preventing its enforcement. And as it is no longer enforced, there can be no future equal

sovereignty challenges to generate further percolation.

Mayhew addressed whether the Affordable Care Act could condition Medicaid funding on meeting its "maintenance-of-effort" section, which required States to maintain their existing Medicaid eligibility standards for children. 772 F.3d at 83. But that is distinct from an equal sovereignty issue. "Giving money to one state but not another—or spending money in one state but not another—is a form of discrimination, but not one that directly impedes the regulatory authority or sovereign autonomy of the state that got the short end of the stick." Thomas B. Colby, *In Defense of the Equal Sovereignty Principle*, 65 Duke L. J. 1087, 1151 (2016).

Unlike here, neither case properly presented equal sovereignty to the respective circuit courts and thus did not present as clean an opportunity for this Court to clarify the doctrine's scope.

2. *This case is an excellent vehicle.*

As a vehicle, this case is no lemon. *Ohio* does not have jurisdictional issues, nor does it present alternative grounds for affirmance. It follows the simple yet wrong proposition that equal sovereignty cannot apply outside the Reconstruction Amendments. *See Ohio v. Env't Prot. Agency*, 98 F.4th at 307. But that fails to recognize that the Reconstruction Amendments present the context in which the equal sovereignty doctrine is weakest. This important separation of vertical powers principle is background to the Constitutional structure. Ignoring

it in the context of the Commerce power risks rendering equal sovereignty effectively a dead letter. *Shelby County* should not be a ticket good for one ride only.

A circuit split is likely impossible due to the D.C. Circuit's exclusive jurisdiction over all nationally significant Clean Air Act rules. *See* 42 U.S.C. § 7607(b). Waiting for further percolation is pointless because the D.C. Circuit has already issued a binding decision on the issue. This court regularly reviews splitless decisions interpreting the Clean Air Act. *See*, *e.g.*, *Michigan v. EPA*, 576 U.S. 743 (2015); *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014); *Util. Air Regul. Group v. EPA*, 573 U.S. 302 (2014); *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Ass'n*, 594 U.S. 382 (2021). The same should be done here.

3. *The Section 209 waiver threatens to throw federalism off balance.*

The Clean Air Act's waiver frustrates core federalism tenets by granting California a monopoly on regulatory innovation. "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). By allowing California—and only California—to set its own unique environmental standards, the waiver effectively prohibits each of the other States from innovating.

Federal law can preempt State laws but it raises troubling questions when it only preeempts some States' laws.

Beyond injuring other States' equal sovereignty, the waiver has significant negative effects. California can wield the authority that only it possesses as a regulatory cudgel when acting as a market participant. Because other States may adopt California's standards but not their own, California has unique authority to negotiate with automakers. When California regulates, they are doing so not just for themselves but also, potentially, for other States. And the costs of those expensive California priorities are felt across the country—including in States that do not choose to adopt California's regulations.

California has wielded this unduly enhanced regulatory leverage to gain an advantage over automakers and injure Fuel Petitioners. After the waiver here was set aside (before its subsequent resurrection), California entered the "California Framework Agreement" with automakers. C.A. Resp.-Int. Br. 4. That framework agreed to adopt the State's stringent standards in exchange for certain concessions. *Id*. California would wield less predatory regulatory power without the availability of its waiver.

And as a result, a favorable decision for Fuel Petitioners here would "take steps to slow or reduce" their injury and put money back in their pocket. *Massachusetts* v. *EPA*, 549 U.S. 497, 525 (2007). To untangle the mess created by the waiver provisions'

incursion on equal sovereignty, this Court should also address the redressability question raised by Fuel Petitioners.

CONCLUSION

This Court should grant *certiorari* to reverse District of Columbia Circuit Court's judgment.

Respectfully submitted,

BRENNA BIRD
Attorney General
State of Iowa
ERIC WESSAN*
Solicitor General
PATRICK C. VALENCIA
Deputy Solicitor General
eric.wessan@ag.iowa.gov

August 8, 2024

**Counsel of Record*

ADDITIONAL COUNSEL

RAÚL R. LABRADOR
Attorney General of
Idaho

JOHN FORMELLA
Attorney General of
New Hampshire

DREW WRIGLEY
Attorney General of
North Dakota

MARTY JACKLEY
Attorney General of
South Dakota

JONATHAN SKRMETTI
Attorney General of
Tennessee

JASON S. MIYARES
Attorney General of
Virginia

BRIDGET HILL
Attorney General of
Wyoming